

Attorney's Docket No. 35718/263948 ✓

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Abad *et al.*  
Appl. No.: Not yet assigned  
Filed: June 25, 2003  
For: GENES ENCODING PROTEINS WITH PESTICIDAL ACTIVITY

10/606,320

Confirmation No.: Not yet assigned  
Group Art Unit: Not yet assigned  
Examiner: Not yet assigned

August 5, 2003

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO ACCORD FILING DATE  
FOR EXPRESS MAIL CORRESPONDENCE NOT RECEIVED BY  
United States Patent and Trademark Office  
(37 C.F.R. § 1.10(e))**

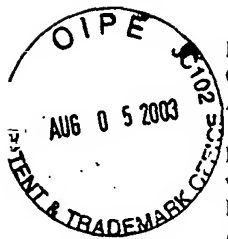
1. This is a petition to accord the correspondence in the above-identified application a filing date of June 25, 2003, which is the date the correspondence was deposited with the U.S.P.S. with proper postage.

2. The following is the statement of Leigh W. Thorne as to when the discrepancy was discovered and establishing that this petition is being filed promptly thereafter as required by 37 C.F.R. § 1.10(e)(1):

A copy of the above-referenced application and accompanying documents, copies of which are included with this petition, was mailed to Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by the Express Mail procedure of the United States Postal Service on June 25, 2003. As of August 4, 2003, we had not received a stamped copy of the return postcard that was included with the application, so we contacted OIPE to inquire about the postcard. OIPE informed us that no copy of the application had been received. Accordingly, we are promptly filing this petition to accord the above-referenced application the filing date of June 25, 2003.

3. The following attached papers are those required by 37 C.F.R. § 1.10(e)(3) for this petition:

- ☒ A true copy of the originally-deposited paper(s) or fee(s), including a copy of the Utility Patent Application Transmittal showing the Express Mail mailing label number.



MAIL STOP PATENT APPLICATION

VIA EXPRESS MAIL

Commissioner For Patents  
Alexandria, VA 22313-1450

Date Mailed: June 25, 2003  
Atty. Dkt. No. 035718/263948

Kindly acknowledge receipt of the accompanying UTILITY PATENT APPLICATION  
with Application Transmittal Cover Sheet for:

Inventor(s): Abad *et al.*; Title of Invention: "*GENES ENCODING PROTEINS WITH  
PESTICIDAL ACTIVITY*"

Pages of Spec. (including claims and abstract) 131 No. of Claims 56

No. of Drawing Sheets 8 (Figures 1-8); Declaration Enclosed NO;

Statement in Support of Sequence Listing (1 page); Sequence Listing (224 pages);

Diskette Containing Sequence Listing

IDS with PTO 1449 Enclosed NO; (No. of 1449 Cites Enclosed    )

Assignment with Cover Sheet and \$40.00 Fee Enclosed NO

Check Enclosed \$2312.00

Please place office stamp hereon and Return Postcard to : **Lynda-Jo Pixley**  
**ALSTON & BIRD LLP**

19. CORRESPONDENCE ADDRESS

CUSTOMER NUMBER 29122

Signature: \_\_\_\_\_

Attorney/Agent of Record: Leigh W. Thorne  
Attorney/Agent Registration No. 47,992

**Alston & Bird LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Raleigh Office (919) 862-2200

Fax Raleigh Office (919) 862-2260

"Express Mail" mailing label number EV 185285207 US

Date of Deposit June 25, 2003

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\_\_\_\_\_  
Lynda-Jo Pixley

**EV185285207US**

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- ARRIVAL AT UNIT, June 26, 2003, 8:50 am, DULLES, VA 20102
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- ACCEPTANCE, June 25, 2003, 5:19 pm, RALEIGH, NC 27619

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<b>UTILITY PATENT APPLICATION TRANSMITTAL</b> <small>(Only for new nonprovisional applications under 37 CFR 1.53(b))</small>	Attorney Docket No. 035718/263948
	First Inventor Abad
	Title GENES ENCODING PROTEINS WITH PESTICIDAL ACTIVITY
	Express Mail Label No. EV 185285207 US

ADDRESS TO: MAIL STOP PATENT APPLICATION  
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P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

Transmitted herewith for filing in the United States Patent Office is a patent application for:

Inventors: Andre R. Abad; Ronald D. Flannagan; Rafael Herrmann; Theodore W. Kahn; Albert L. Lu;  
Billy Fred McCutchen; James K. Presnail; James F.H. Wong; and Cao-Guo Yu

Assignee of this invention is E.I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington, Delaware 19898

1. ☒ The Filing Fee has been calculated as shown below:  
2. ☐ Applicant claims Small Entity Status. See 37 CFR 1.27.

	No. Filed	No. Extra	Small Entity		Large Entity	
			Rate	Fee 0	Rate	Fee 1
BASIC FEE				\$ 0		\$ 750
TOTAL CLAIMS:	56 - 20 =	36	X 9 =	\$ 0	x 18 =	\$ 648
INDEP CLAIMS:	14 - 3 =	11	X 42 =	\$ 0	x 84 =	\$ 924
<input type="checkbox"/> MULTIPLE DEPENDENT CLAIMS PRESENTED				+140 = \$		+280 = \$
*If the difference in Column 1 is less than zero, enter "0" in Column 2.			TOTAL	\$	TOTAL	\$ 2312

The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit  
Acct. No. 16-0605.

- a. ☒ Fees required under 37 CFR 1.16 (National filing fees).  
b. ☒ Fees required under 37 CFR 1.17 (National application processing fees) including any  
extension of time fees under 37 CFR § 1.136(a) that are required for consideration of  
papers filed during prosecution.

☒ A check in the amount of \$ 2,312.00 for the filing fee is enclosed.

☐ The above filing fee will be paid along with Applicant(s) Response to the Notice to File Missing  
Parts.

3. ☒ Specification; Total Pages 131

In re: Abad *et al.*  
Appl. No.: Not yet assigned  
Filed: June 25, 2003  
Page 2

- ☒ A true copy of the "Express Mail" mailing label from the original mailing showing the "date-in."
- ☒ A true copy of the Express Mail Log that came into being within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the U.S.P.S.
- ☒ The log indicating that the correspondence was deposited prior to the last scheduled pickup for that day.

Respectfully submitted,




Leigh W. Thorne  
Registration No. 47,992 ✓

**Customer No. 29122**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Raleigh Office (919) 862-2200  
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Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Lynda-Jo Pixley

RTA 2140685v1

4. ☒ 8 Sheets of Drawing(s) (35 USC 113)
5. ☐ Declaration and Power of Attorney; [Total Pages    ]  
 a. ☐ Newly executed (original or copy)  
 b. ☐ Copy from a prior application (37 CFR 1.63(d))  
     *(for continuation/divisional with Box 18 completed)*  
 i. ☐ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s)  
     named in the prior application, see 37 CFR 1.63(d)(2) & 1.33(b).
6. ☐ Application Data Sheet. See 37 CFR 1.76
7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)  
 a. ☒ Computer Readable Copy (CRF)  
 b. ☐ Request for Transfer of Computer Readable Form of Sequence Listing  
     under 37 CFR § 1.821(e) and MPEP 2422.05 (must be compliant with new rules)  
 c. ☒ Specification Sequence Listing on:  
     i. ☐ CD-ROM or CD-R (2 copies); or  
     ii. ☒ Paper (224 Pages)  
 d. ☐ Statements verifying identity of above copies

#### ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s) (including a check for the \$40.00 fee)
10. ☐ 37 CFR 3.73(b) Statement *(when there is an assignee)*; ☐ Power of Attorney
11. ☐ English Translation Document *(if applicable)*
12. ☐ Information Disclosure Statement (IDS)/PTO-1449;     Copies of IDS Citations
13. ☐ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503) *(Should be specifically itemized)*
15. ☐ Certified Copy of Priority Document(s) *(if foreign priority is claimed)*  
☐ Foreign Priority is claimed as Application No.    , filed
16. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i).  
 Applicant must attach form PTO/SB35 or its equivalent.
17. ☐ Request for Early Publication Under 37 CFR § 1.219. Fee of \$300.00 is enclosed.
18. **If a CONTINUING APPLICATION, check appropriate box and supply the requisite information below  
 and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:**  
☐ Continuation ☐ Divisional ☐ Continuation in Part (CIP)  
 of prior Application No:    ; Filed

Prior Application Information: Examiner

Group/Art Unit:

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.



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